

NANCI MATOS

VS.

Respondent

AND

Insurance Carrier

In a letter dated January 4, 2002, Assistant Director Kenneth J. Hursh notified the parties that the Director had temporarily assigned the case to him for hearing and decision on claimant's Motion to Recuse Administrative Law Judge Bruce Moore. The Assistant Director held a hearing on claimant's recusal motion on February 6, 2002, in Wichita, Kansas. Thereafter, on February 7, 2002, the Assistant Director entered a Final Order and denied claimant's recusal request. The Assistant Director concluded that the allegations made against the ALJ, if true, would not cause a reasonable person to believe that the ALJ would not afford claimant a fair hearing or claimant's attorney fair treatment in future proceedings.

Claimant and claimant's attorney contend that the Assistant Director erred. In their brief to the Appeals Board (Board) dated March 21, 2002, they argued the facts cited in the affidavits filed in this claim would cause a reasonable person to doubt the ALJ's impartiality in dealings with claimant's attorney. Accordingly, claimant and claimant's attorney request the Board to issue an order that the ALJ be recused from this case and also issue a blanket recusal to prevent the ALJ from adjudicating any proceedings in which claimant's attorney appears.

Additionally, while this appeal was pending before the Board, the parties settled this claim on June 25, 2002, before Special Administrative Law Judge John C. Nodgaard in Wichita, Kansas. The claimant accepted a running award for a 10 percent permanent partial general disability based on permanent functional impairment. Claimant retained her right to review and modify the award and her right to future medical treatment upon approval by the Director.

The issues before the Board on appeal are:

1. Is the recusal request made by claimant and her attorney moot due to the parties' June 25, 2002, settlement?
2. If not, should ALJ Moore be removed from this claim or, in the alternative, removed from all matters in which claimant's attorney appears.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the February 6, 2002, hearing transcript and considering the claimant's brief, the Board makes the following findings and conclusions:

Because of the June 25, 2002, settlement entered into by the parties, the Board concludes the request for an order preventing the ALJ from participating in this claim is moot. In that settlement, the claimant effectively resolved all pending issues against respondent and its insurance carrier in this proceeding.

Accordingly, the appeal should be dismissed.

WHEREFORE, the Board finds and concludes that claimant's appeal is dismissed.

IT IS SO ORDERED.

Dated this ____ day of July 2002.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger A. Riedmiller, Attorney for Claimant
Terry J. Malone, Attorney for Respondent
Kenneth J. Hursh, Workers Compensation, Assistant Director
Philip S. Harness, Workers Compensation Director